THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Friday, the twenty seventh day of January,

two thousand and six .

W.P.No.18035 of 1996

Gram Panchayat, Pothavaram, represented

by its Sarpanch Ch.Veeranna

....Petitioner.

And:

Collector, Panchayat Wing, Kakinada,

East Godawari District and others.

.....Respondents.

O R D E R:

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The case of the petitioner Gram Panchayat is that it got planted coconut trees on both sides of the road in Korukondavari Harijanapeta in 1981, and that they started yielding fruit in 1987, and as were being picked away by the passersby, in order to prevent such theft, and also to augment it resources, it passed a resolution, on 24.5.1996, to auction the leasehold right to pick the usufruct from the trees for a period of three years, and sent the same for approval to the Divisional Panchayat Officer, Amalapuram, who, through his letter dated

24.6.1996 accorded permission, and when it was proposing to conduct the auction by fixing the upset price, it received a notice dated 18.7.1996 from the Mandal Revenue Officer (3rd respondent), informing it that the Revenue Divisional Officer, Amalapuram, sent a wireless message to him to stop the auction, and so the auction could not be held. Since the reasons for stoppage of auction were not known to it, it made a representation to the 2nd respondent and also to Collector, Panchayat Raj, Kakinada (1st respondent) to inform the reasons for stopping of the auction, but they did not send a reply. But it came to know that some of the Harijans who have erected thatched structures un-authorisedly near the road margins had sought pattas for the land in their occupation from the Government, and that the respondents with an intention to grant pattas to them had stopped the proposed auction. Since road and road margins vest in the Gram Panchayat, it has every right to auction the leasehold rights of the usufruct from the trees planted by it. Road and road margin can not be assigned to anybody. Therefore, the action of the respondents in stopping the auction, and not permitting the petitioner to utilize the usufruct from the trees belonging to it is highly irregular.

2) On behalf of the respondents, 3rd respondent filed his counter affidavit *inter alia* admitting that the road on which the coconut trees were planted vested in the petitioner Gram Panchayat, and as some of the harijans, who encroached on the road margin of Korukondavari Harijanapeta by raising thatched houses, had requested for issuance of pattas, instructions were issued to the petitioner not to conduct auction of the usufruct of the coconut trees for the time being, and since a notice will have to published in the locality whenever it intends to assign the land, calling for objections, and since a resolution of the concerned Gram Panchayat is also required before the land belonging to the Government is assigned, as and when such notice is published, petitioner can raise its objection. Objectionable encroachments will be removed by taking recourse to the provisions of A.P.Encroachment of Land Act, by providing alternative land to eligible encroachers. Since the petitioner after a stay is granted by this Court has been auctioning the usufruct of the coconut trees, it did not suffer any loss and so petitioner is not entitled to any relief.

3) The fact that the coconut trees on the road margins were planted by the

petitioner is not denied or disputed by the respondents. In view of the definition of 'public road' in Section 2(33) of the Panchayat Raj Act, 1994 (the 'Act'), it is clear that the entire area up to the adjacent land on either side of the road would be 'public road' within the meaning of the Panchayat Raj Act. As per Section-53 of the Act, all public roads in any village, other than National Highways, State Highways and roads vesting in Zilla Parishad or Mandal Parishad vest in the gram panchayat together with all pavements, etc. The fact that some persons encroached the road margins and raised thatched structures is admitted in the counter affidavit filed on behalf of the respondents. The reasons for encroaching the road margin near the place where coconut trees are planted is obvious.

4) All encroachments on roads and road margins have to be treated as objectionable, because road margins also would be 'public road' in view of the Sec.2(33) of the Act and since public have a right to use every inch of the road and the owner of the land adjacent to the public road has the right of ingress and egress from every point of contact of his land with the road and so any structure raised on the road margin would amount to 'public nuisance'. See **Gopala Krishna Gokhale Vs. Narasimham**[1] and **M.Butchemma Vs. M.Venkateswara Rao**[2]**.** So, petitioners have a right to seek an injunction against assignment of road margins, because they need not wait till the proposal for assignment is published, and can take recourse to preventive action, because it is well known that prevention is always better than cure.

5) Therefore, the writ petition is allowed with costs and the *rule nisi* is made absolute, the action of the respondents in stopping the auction of leasehold rights of the coconut trees is declared to be ultra vires the power of respondents, and respondents are directed not to assign the road margins and take steps to remove the encroachments and the road margins already made.

JUSTICE C.Y.SOMAYAJULU

27th January 2006.

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